

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:21 MJ 28 WCM**

**UNITED STATES OF AMERICA,** )

**vs.** )

**MARK THOMAS SZCZERBIAK** )

**Defendant.** )

---

**ORDER**

EDNC File Number **5:21 CR 163 M**

This matter came before the court on May 5, 2021 pursuant to Rule 40 of the Federal Rules of Criminal Procedure following Defendant's arrest on a warrant issued by the United States District Court for the Eastern District of North Carolina in connection with a Sealed Petition for Action on Conditions of Pretrial Release ("Petition"). At the hearing, the Government was represented by Assistant United States Attorney Richard Edwards. Assistant Federal Public Defender Fredilyn Sison appeared with Defendant and was appointed to represent him.

A Bill of Indictment has been filed in the Eastern District charging Defendant with two counts of violating federal drug laws, one count of knowingly possessing a firearm in furtherance of a drug trafficking crime, and one count of knowingly possessing in and affecting commerce a firearm and ammunition after he had previously been convicted of a crime punishable by more than one year of imprisonment.

The Petition alleges that Defendant has violated a condition of his pretrial release that prohibits him from using or unlawfully possessing a narcotic drug or other controlled substance unless prescribed by a licensed medical practitioner. Specifically, it is alleged that on May 1, 2021, the Probation Office in the Western District of North Carolina was advised that Defendant had overdosed on heroin and that the Asheville Police Department had responded and revived him, and that, as of May 2, 2021, Defendant was in stable condition at a hospital.<sup>1</sup> It is further alleged that Defendant's third-party custodian has advised that she is no longer willing to serve in that capacity and does not want Defendant staying at her residence.

Defendant waived an identity hearing and the Government orally moved that Defendant be detained while he is transported to the Eastern District for further proceedings. Defendant did not object to the Government's request.

In proceedings held pursuant to Rule 40, a magistrate judge in the district of arrest may modify any previous release or detention order issued in another district, though the reasons for doing so must be stated in writing. Fed. R. Crim. P. 40(c).

---

<sup>1</sup> During the May 5 hearing, it appeared that Defendant had materially recovered from this episode, as he was able to participate in the proceedings and confer with counsel.

In this case, counsel for the parties indicated during the hearing that they did not believe allowing the Government's request that Defendant be transported to the Eastern District in custody would constitute a change of his conditions of pretrial release. Nonetheless, as authorities clearly supporting that view have not been located immediately, and in order to confirm compliance with Rule 40, to the extent placing Defendant in custody at this time for the purpose of returning him to the Eastern District for further proceedings constitutes a change of the conditions of release previously established by the Eastern District, the undersigned finds and concludes, in view of the circumstances of this case as described above, that such a change is warranted and therefore will allow the Government's request to that effect. As stated during the hearing, this modification is intended to be temporary and only for the purpose of allowing Defendant to be transported to the Eastern District by the United States Marshal's Service and is without prejudice to any additional modification or review of Defendant's pretrial release conditions that may be necessary or appropriate in the Eastern District.

**IT IS THEREFORE ORDERED THAT** the Government's oral motion is **GRANTED**, and Defendant is remanded to the custody of the United States Marshal's Service to be transported to the Eastern District of North Carolina for further proceedings.

Signed: May 5, 2021

A handwritten signature in black ink, reading "W. Carleton Metcalf", written over a horizontal line.

W. Carleton Metcalf  
United States Magistrate Judge

